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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Implementation of Section 309(j))
of the Communications Act -)
Competitive Bidding)

PP Docket 93-253

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TO: The Commission

AUG 22 1994

PETITION FOR RECONSIDERATION FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

American Personal Communications ("APC")^{1/} urges the Commission to reconsider and rescind a substantive PCS technical rule adopted in the Fifth Report and Order, which properly should focus on PCS auction and application-processing procedures rather than substantive PCS rules. That rule, new Section 24.816, provides, inter alia, that "unless the broadband PCS licensee has received prior approval from the FCC, no antenna structure, including radiating elements, tower, supports and all appurtenances, may be higher than 61 m (200 feet) above ground level at its site." This rule is not based on any record and should be reconsidered.

First, the rule as a whole is simply unnecessary. All the substantive protections intended to be fostered by such a rule already have been established by the Commission:

a. Matters concerning Federal Aviation

Administration matters have been addressed with

^{1/} American PCS, L.P., d/b/a American Personal Communications, a partnership in which APC, Inc. is the general managing partner and The Washington Post Company is an investor/limited partner.

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long-standing generic provisions in Part 17 of the Commission's Rules, which treat all licensees equally and are sufficient for PCS.

- b. The Commission adopted a PCS-specific substantive rule, new Section 24.232, regulating PCS antenna height, based on a full record, in Gen. Docket 90-314.^{2/}
- c. The Commission adopted a PCS-specific substantive rule, new Section 24.236, regulating PCS system field strength.^{3/}
- d. The Commission adopted a PCS-specific substantive rule, new Section 24.237, establishing procedures by which all PCS licensees must protect incumbent microwave users from interference.^{4/}

These rules, taken in concert, properly preserve the flexibility of PCS licensees to construct systems that meet all interference protection guidelines and serve the public's interest in ubiquitous PCS coverage. New section 24.816, however, conflicts with these rules and limits the flexibility of PCS licensees. The ultimate result of new Section 24.816,

^{2/} See Amendment of the Commission's Rules to Establish New Personal Communications Services, Memorandum Opinion and Order, FCC 94-144, Appendix A at p. 20 (Gen. Docket 90-314, June 13, 1994).

^{3/} See id., Appendix A at p. 20.

^{4/} See id. at 20-21.

if it is not reconsidered, may be less effective PCS service for the public, greater build-out costs for PCS licensees, and slower service to rural areas. Section 24.816 is both unnecessary and counterproductive.

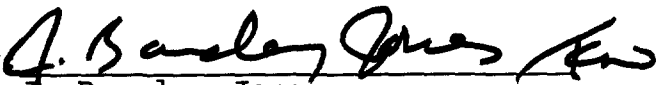
Second, the Commission elsewhere has gone to great lengths to ensure that all commercial mobile radio service ("CMRS") providers operate on an equal regulatory playing field. In stark contrast to these efforts, new section 24.816 imposes a regulatory burden on PCS providers that is not imposed on either cellular or ESMR providers. This rule will selectively disadvantage only PCS licensees, while their cellular and ESMR competitors will be free to build superior technical facilities without the potential delaying effect of prior Commission approval.

Third, new Section 24.816 mints a new requirement for prior Commission consent that will consume significant industry and staff resources without gaining any appreciable benefit. Under this rule, any PCS licensee that must exceed 200 feet at any one of its hundreds (in some cases, perhaps thousands) of base station sites must file and await prior Commission consent. The amount of Commission staff effort that will be required to assess and process such applications will strain the Commission's already taxed resources. This rule will impose burdens on the Commission and potentially delay the provision of PCS service.

Finally, new Section 24.816 was adopted without the benefit of industry comment in PP Docket 93-253, which is intended to adopt auction and application-processing rules rather than substantive PCS rules. Perhaps because the rule was not tested in the crucible of industry comment, it is internally inconsistent -- subsection (c), for example, would appear to irrationally discourage, rather than encourage, antenna co-location by restricting the placement of PCS antennas on existing structures while permitting placement of antennas at similar heights on new structures. The rule as a whole is irrational, unnecessary and not supported by the record, and its adoption should be reconsidered.

Respectfully submitted,

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